

REMARKS

Claims 1-3 and 5-9 remain pending. Claims 1, 2, 3, 6, 8 and 9 have been amended. Claim 4 has been canceled. Reconsideration of the application is respectfully requested.

Claims 1-9 were rejected under 35 U.S.C § 103(a) as obvious over Siess et al (WO 2002/043791 in view of Sammler et al. (USPN 6,544,216). Claim 1 has been amended to more succinctly claim the invention to the extent that the "projection" has been limited to a pigtail tip. Claims 2, 3 6, 8 and 9 have been amended for consistency. As is acknowledged by the Examiner, the cited primary reference is devoid of any suggestion to dispose a spacer at the distal end of the device in order to maintain the inlet openings spaced apart from adjacent heart walls. In an effort to overcome this shortcoming, the Examiner attempts to rely on the secondary reference by, in effect, transferring catheter 46, 48 from the outlet side of the Sammler device to the inlet side of the Siess device and characterizing catheter 46, 48, which is attached to balloon 35a, as being able to "act as a pigtail" to "keep the distal end of the cannula spaced apart from adjacent heart walls." Applicant respectfully traverses.

Notwithstanding the lack of any motivation or teaching to redeploy the structure shown in the secondary reference to address a potential problem (preventing inlet openings from being sucked up against tissue) in the device shown in the primary reference, wherein such problem is not recognized by either reference, the secondary reference clearly teaches that it is the inflated balloon that serves to space the device apart from the heart tissue and protect the tissue from damage (col 2, line 45). While catheter 46, 48 is described in the reference as being flexible, there is absolutely no suggestion that it is to be used without the balloon 35a or that it is to assume the coiled or rounded configuration of a pigtail. Reliance on a balloon to prevent inlet openings from being sucked up against tissue would comprise a very different approach to the problem than the solution that is provided for and claimed by the present invention. On the other hand, element 46, 48 without the balloon would be incapable of providing for the atraumatical support at heart or vessel walls (specification page 3, line 12) as is provided for by a pigtail configuration. The substantially straight configuration of element 46, 48 that is shown would not be expected to prevent inlet openings located proximal thereto from being sucked up against tissue while its distal end could conceivably be traumatically extended into tissue either during advancement of the device or pumping of the heart. The use of a pigtail tip configuration, not in

any way suggested by either of the two references, addresses and overcomes both of these potential problems simultaneously. In view of the fact that neither reference is concerned with preventing pump inlet openings from being sucked up against tissue and that neither reference employs a pigtail tip for any purpose, it is respectfully submitted that obviousness is effectively avoided.

In light of the above amendments and remarks, applicant earnestly believes the application to now be in condition for allowance and respectfully requests a timely disposition thereof.

The commissioner is authorized to charge any deficiencies in fees or credit any overpayments to our Deposit Account No. 06-2425.

Respectfully submitted,

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GOH:lm